

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALEJANDRO MENDOZA-MENDOZA,

Defendant.

NO. CR-06-2011-LRS

**ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS CASE**

**BEFORE THE COURT** is Defendant's Motion to Dismiss Case (**Ct. Rec. 25**), filed August 14, 2006, and argued at the scheduled pretrial conference on August 31, 2006. The Defendant was present at the hearing accompanied by his attorney, Rebecca Pennell. James Hagarty represented the government in this matter.

After careful review of the pleadings submitted by all parties and with the benefit of oral argument, this order will memorialize the oral rulings of the Court on that date, which are incorporated herein by reference.

The Court notes that there are no factual disputes in this case. The facts were set forth in the pleadings and on the record. The Court finds that under 8 U.S.C. Section 1229(a), "an immigration judge

1 shall conduct proceedings for deciding the inadmissibility or  
2 deportability of an alien." Because there had not been a finding of  
3 inadmissibility, the Immigration Judge erred in not advising Mr.  
4 Mendoza-Mendoza that he was eligible for voluntary departure. Given  
5 the prejudicial flaws in Defendant's deportation proceeding, the  
6 current indictment must be dismissed.

7 Accordingly, **It IS HEREBY ORDERED:**

8 Defendant's Motion to Dismiss Case (**Ct. Rec. 25**) is **GRANTED**. The  
9 current indictment is **DISMISSED**.

10 **IT IS SO ORDERED.** The District Court Executive is directed to  
11 enter this order and to provide copies to all counsel, and the United  
12 States Marshal's Office.

13 **DATED** this 31st day of August, 2006.

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16 *s/Lonny R. Suko*

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18 LONNY R. SUKO  
19 United States District Judge  
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